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08/108,036 08/17/93 BONATI

A EXAMINER 10 (3)

BENNETT, C

F3M1/0824

ART UNIT PAPER NUMBER

5

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DATE MAILED

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

08/24/94

☒ This application has been examined ☐ Responsive to communication filed on _____ ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), _____ days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- | | |
|---|--|
| 1. <input checked="" type="checkbox"/> Notice of References Cited by Examiner, PTO-892. | 2. <input type="checkbox"/> Notice re Patent Drawing, PTO-948. |
| 3. <input type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449. | 4. <input type="checkbox"/> Notice of Informal Patent Application, Form PTO-152. |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/> _____ |

Part II SUMMARY OF ACTION

1. ☒ Claims 1-15 are pending in the application.

Of the above, claims 1, 7-15 are withdrawn from consideration.

2. ☐ Claims _____ have been cancelled.

3. ☒ Claims 5, 6 are allowed.

4. ☒ Claims 2, 3, 4 are rejected.

5. ☐ Claims _____ are objected to.

6. ☐ Claims _____ are subject to restriction or election requirement.

7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.

8. ☐ Formal drawings are required in response to this Office action.

9. ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable. ☐ not acceptable (see explanation or Notice re Patent Drawing, PTO-948).

10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____ has (have) been ☐ approved by the examiner. ☐ disapproved by the examiner (see explanation).

11. ☐ The proposed drawing correction, filed on _____, has been ☐ approved. ☐ disapproved (see explanation).

12. ☐ Acknowledgment is made of the claim for priority under U.S.C. 119. The certified copy has ☐ been received ☐ not been received
☐ been filed in parent application, serial no. _____; filed on _____

13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

Applicant's election of Group II in Paper No. 4 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (M.P.E.P. § 818.03(a)).

Accordingly, claims 1 and 7-15 have been withdrawn from further consideration by the Examiner, 37, C.F.R. 1.142(b) as being drawn to non-elected inventions.

The drawings are objected to because there is no illustration of a stylet which is recited in claim 2. Correction is required.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claim 2 is rejected under 35 U.S.C. § 102(b) as being anticipated by Lazarus ('543).

Lazarus teaches a method of dilating an incision comprising inherently inserting a stylet for guide wire 86; providing a first tube 94; providing a second tube 84 having a length greater

than said first tube 94; dimensioning said first tube 94 to telescopically receive said second tube 84 therewithin; tapering a distal end of said second tube 84 (see reference numeral 92); said first and second tubes 84 and 94 forming a dilator means when in said second tube 84 is inserted within said first tube 94; inserting said dilating means; dilating said incision a first amount by inserting the tapered end 92 of the second tube 84; dilating said incision further by inserting the first tube 94; and withdrawing said second tube 84 from within said first tube 94.

Claims 3 and 4 are rejected under 35 U.S.C. § 102(e) as being anticipated by Baumgartner ('021).

Baumgartner teaches a device comprising: a base member 16; an elongated tube 12; a common bore means as seen in fig. 1 formed in said tube and base member; a water port 17 formed in said base member 16 including a bore means formed therein in fluid communication with the bore means common to said tube and base member; and recess means at the proximal end of the base member (see fig. 2); said base member having a predetermined depth. It is noted that the claims have been evaluated with respect to the prior art based upon the structure which has been positively recited; the name given to the device, i.e. "a dilator tube" is not given patentable weight. Furthermore, the tube 12 of Baumgartner would inherently dilate an incision in a patient when said tube is inserted.

Claims 5 and 6 are allowable over the prior art of record.

Serial No. 08/108,036
Art Unit 3307

-4-

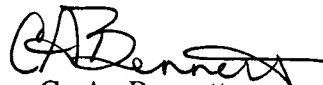
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Chris A. Bennett, whose telephone number (703) 308-0980. The Examiner can normally be reached on Monday-Friday from 9:30 a.m. to 5:00 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Ed Burr, can be reached on (703) 308-0979.

The fax number for this group is (703) 305-3590, 91.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0858.


C. A. Bennett
Patent Examiner
Art Unit 3307

CAB 
August 22, 1994